
(1918) 04 PAT CK 0021
In the Patna High Court
Case No : First Civil Appeal No. 181 of 1916

Asharfi Singh

APPELLANT

Vs

Madhabeshwar Indra Narain Sahi

RESPONDENT

Date of Decision : 11-04-1918

Acts Referred:

Citation : (1918) 04 PAT CK 0021

Judgement

Sir Thomas Fredrick Dawson Miller, Kt., C.J.—This is an appeal from a decision of the Subordinate Judge of the first Court, Muzafferpore, dated the 7th August 1916. One of the issues framed was whether the plaintiffs had any cause of action against the defendant No. 7. With the consent of all parties this issue was tried separately, and it was argued and decided upon the assumption that the issue was whether the plaint disclosed any cause of action against defendant No. 7 and no evidence was called.

2. The object of the plaintiffs in bringing the suit is undoubtedly to obtain possession of certain properties the succession to which reopened on the death of Musammat Malikrani Koer in 1908. She succeeded her grandson Babu Krishna Pertap Indra Narain Singh, who was the last male owner. The defendants Nos. 2 to 6 are either descendants or collateral relations of Malikrani's husband but trace their descent through females and are, therefore, not agnates of the last male owner. Defendant No. 7 is also a Bandhu of the last male owner, but belongs to a more remote class than the defendants Nos. 2 to 6 and lays no claim whatever to the property in question. Defendant No. 1 claims to be the adopted son of Babu Kishen Kishore Narain Singh, a descendant in the male line from Bhagirath Jha, the common ancestor of himself and the other defendants, and if he can prove the validity of his adoption, will take in priority both to the plaintiffs and to the defendants Nos. 2 to 6 who lay claim to the property in question. The plaintiffs claim to be the direct descendants in the male line from a brother of Bhagirath Jha, one Bunwari. The relationship between Bunwari and Bhagirath Jha is disputed by the defendants Nos. 1 to 6. Before the plaintiffs can succeed against the defendants Nos. 2 to 6 they must prove that Bunwari and

Bhagirath Jha were sons of the same father, and before they can succeed against defendant No. 1 it must further be found that the defendant No. 1 was not the adopted son of Kishen Kishore Narain Singh. The relationship between the parties is made clear by reference to the genealogical trees attached to the pleadings. I have stated the above facts to show what is the nature of the questions in dispute between the parties in the suit who lay claim to the property in question. So far as these issues are concerned, the defendant No. 7 is not a necessary party as he has at no time claimed and does not now claim any right, title or interest in the disputed property, nor could he in the circumstances by any possibility make out a title. He only asks to be dismissed from the suit and left alone.

3. But the plaintiffs contend that as in their plaint they ask not only for possession of the property but also for a declaration that they are the nearest gotias to the last male owner of the property, the suit ought to be treated as a declaratory suit u/s 42 of the Specific Relief Act and they claim that they are entitled to such a declaration against defendant No. 7, because in the year 1916 defendant No. 7, in the course of probate proceedings concerning a Will propounded by the widow of Kishen Kishore Narain Singh (defendant No. 1's adoptive father), claimed amongst others to be the nearest heir to Kishen Kishore and did not admit the plaintiffs' claim to be the nearest gotias related to Kishen Kishore. It should be noted that defendant No. 7 is not interested to deny that the plaintiffs are not heirs to Krishna Pertap Indra Narain Singh and it does not appear that he had in terms done so. The cause of action in the present suit is alleged in paragraph 12 of the plaint to have arisen in 1908, when certain events arose relating to the property now claimed and as the suit is one claiming possession of that property alone with a declaration that the plaintiffs were the nearest gotias of the last male owner, it is clear that the declaration is merely claimed as an adjunct to a title suit relating to that property and is not an essential part of the claim. Moreover, no claim is made for a declaration that the plaintiffs are the nearest gotias related to Kishen Kishore.

4. The object of the plaintiffs in seeking to join the defendant No. 7 as a party in these proceedings is admittedly to assist a possible claim by them in any future litigation which may arise on the death of Rani Rajbansi Koer, defendant No. 7's grandmother, when the succession to the estate of her late husband will re-open. This is a matter entirely unconnected with the claim in the present suit. This is not a suit for a declaration such as is contemplated and sanctioned by section 42 of the Specific Relief Act. The declaration claimed is merely introductory to a claim for possession and is not one for which legislative sanction is required. Moreover, it is not a claim for a declaration as to the plaintiffs' relationship to Krishna Kishore, and in my opinion it would be an abuse of the process of the Courts to allow parties to be harassed in this way by being made parties to litigation in which the only relief claimed is that in which they have no interest and are not directly concerned. I agree with the conclusion arrived at in the Court below and I would, therefore, dismiss the appeal with costs and order that

the plaint be rejected as against the defendant No. 7.

Jwala Prasad, J.

5. I concur.